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JONATHAN SPANGLER  
NU VASIVE, INC.  
4545 TOWNE CENTRE COURT  
SAN DIEGO CA 92121

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JAN 30 2009

In re Application of	:	OFFICE OF PETITIONS
Patrick Miles, et al.	:	
Application No. 10/789,797	:	DECISION ON PETITION
Filed: February 27, 2004	:	
Attorney Docket No. 014US1	:	

This is also decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 31, 2007, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 16, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 17, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$770, and (3) a proper statement of unintentional delay.

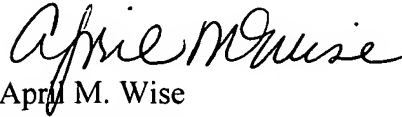
The petition is **Granted**, *nunc pro tunc*.

The Technology Center was without authority to act further in the case absent a grantable petition reviving this application after abandonment. Nevertheless, in view of this decision on petition, the amendment is now considered a proper filing and the actions of the Technology Center taken thereafter are hereby ratified.

A petition to revive under the unintentional provision of 37 CFR 1.137(f) was filed on December 20, 2007 with a fee of \$770, the \$770 fee submitted with the petition on December 31, 2007 is considered a duplicate payment and unnecessary. This fee will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3762 for appropriate action by the Examiner in the normal course of business on the reply received December 31, 2007.

A handwritten signature in cursive script, appearing to read "April M. Wise".

April M. Wise  
Petitions Examiner  
Office of Petitions